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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag.CJ

Writ Petition (C) No.4574 of 2006

PETITIONER PLAINTIFF		Smt. Sharda W/o Kalindar Singh, Aged about 32 years, Caste Rajput, R/o Village Sonarpara P.O. Bharvah, Distt. Koraput (Orrisa)
		VERSUS
RESPONDENTS DEFENDANT	1.	Smt. Shashi Parihar W/o Manohar Singh, aged about 38 years, Caste Rajput, R/o Village Kasavahi, P.S. & Tahsil Charama, Distt. Kanker (C.G.)
DEFENDANT NO.2	2.	Brijlal Singh S/o Bisahu Singh Parihar, caste Rajput, Aged about 67 years, R/o Village Badegori, P.O. Lilejhar, P.S. & Tahsil Charama, Distt. Kanker (C.G.)
DEFENDANT NO.3	3.	Smt. Geeta Bai Wd/o Chhabilal Parihar, aged about 62 years, R/o Village Keshkal, Distt. Bastar (C.G.)
DEFENDANT NO.4	4.	Nem Singh @ Nemlal Singh Parihar Aged about (42) 62 years, R/o Village Khallari, Tahsil Vishrampuri (Keskal), Distt. Bastar (C.G.)
DEFENDANT NO.5	5.	Jagmohan Singh Parihar, S/o Chhabilal Singh Parihar, Caste Rajput, aged about 35 years R/o Village Dokala, P.S. & Tahsil Charama, Distt. Kanker (C.G.)
DEFENDANT NO.6	6.	Smt. Rukmani @ Sukbati D/o Bisahu Sahu, aged about 65 years, R/o Village Near Santoshi Mandir, Bhanupratappur, Distt. Kanker (C.G.)
DEFENDANT NO.1	7(a)	Duryodhan Singh, S/o Vikram Singh caste Rajput, aged about 50 years, R/o Village Dodki, Forest guard police Chowki, Dstt. Rajnandgaon (C.G.)
	(b)	Manohar Singh, S/o Late Vikram Singh Rajput, aged about 45 years, R/o Village Kasavahi, P.S. Charama Distt. Kanker (C.G.)
	(c)	Uttam Singh S/o Late Rajendra Singh, caste Rajput, aged about 18 years, R/o Santoshi Mandir Raipur (C.G.)
	(d)	Jairam Singh Parihar S/o Late Vikram Singh Parihar, caste Rajput aged 35 years, R/o Village Khursitikul, Post Dangad, P.S. Ambagarh Chowki, Distt. Rajnandgaon (C.G.)
	8.	State of Chhattisgarh Through Collector, Kanker (C.G.)

Writ Petition under Article 227 of the Constitution of India

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Present: Shri D.N. Prajapati, counsel for the petitioner.
Shri Rakesh Pandey, counsel for the respondents No. 1 and 7(b).

ORAL ORDER
(Passed on 12th July, 2007)

Learned counsel for the petitioner submits that he was a plaintiff in Civil Suit No. 79-A/96 and on 28-11-2002 plaintiff's counsel could not appear before the Trial Court therefore the case was dismissed for default. Then plaintiff/petitioner moved an application for restoration on 02-12-2002. The trial Court after hearing restored the matter to its original number. Aggrieved by the said order the defendants filed an appeal before the District Judge which was transferred to Additional District Judge, Kanker.

Learned counsel for the petitioner has raised a preliminary objection that there is no provision of appeal and the appeal does not lie against the impugned order of restoration. Under order XLIII Rule 1 (c) an appeal can be filed but it cannot be filed against the order of restoration. Counsel for the respondents fairly agreed with the proposition. Therefore, the order passed on merit by the Appellate Court cannot be sustained. Accordingly, the order is set-aside and the writ petition is allowed.

Sd/-
Ag. Chief Justice